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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

CHRISTOPHER CANTWELL

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20-cr-06-01-PB
February 24, 2021
10:05 a.m.

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE PAUL J. BARBADORO

APPEARANCES:

For the Government:

John S. Davis, AUSA
Anna Z. Krasinski, AUSA
U.S. Attorney's Office

For the Defendant:

Jeffrey Levin, Esq.
Eric Wolpin, Esq.
Federal Defenders Office

Probation:

Sean Buckley

Court Reporter:

Susan M. Bateman, RPR, CRR
Official Court Reporter
United States District Court
55 Pleasant Street
Concord, NH 03301
603) 225-1453

1 P R O C E E D I N G S

2 THE CLERK: Court is in session and has for
3 consideration a sentencing hearing in United States of America
4 versus Christopher Cantwell, criminal case
5 number 20-cr-6-1-PB.

6 THE COURT: All right. Here's how I intend to
7 proceed. I would like to first review the report with the
8 defendant to make sure he's read it and understands it. I
9 want to determine the defendant's guideline sentencing range
10 in the absence of a departure or variance. I then will
11 address departures and variances together. I have certain
12 specific questions that I want to review with the parties, and
13 then I'll give them an opportunity to say anything else they
14 want to say. I'll give the defendant an opportunity to speak.
15 I'll then rule on departures and variances and impose the
16 sentence I intend to impose. All right?

17 So let's start with the presentence report.

18 Mr. Cantwell, I have a report for you that was
19 prepared originally on November 20th of 2020, and it was
20 revised on December 17th. Have you seen that report?

21 THE DEFENDANT: I have.

22 THE COURT: Have you read it and discussed it with
23 your attorney?

24 THE DEFENDANT: I have.

25 THE COURT: Do you feel you understand it?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. Thank you. You can be
3 seated.

4 Does the government dispute any of the facts or
5 legal conclusions contained in the report?

6 MR. DAVIS: No, your Honor.

7 THE COURT: Is the defense pressing any objections
8 to the facts and legal conclusions set forth in the report?

9 MR. WOLPIN: No, your Honor.

10 THE COURT: I adopt the findings of fact and
11 conclusions of law set forth in the report which will be made
12 a part of the record under seal.

13 I determine that the defendant's total offense
14 level in the absence of a departure or variance is 20 and his
15 Criminal History Category is III. The guideline sentencing
16 range is 41 to 51 months.

17 So the parties have filed detailed and helpful
18 memoranda that affect my sentencing judgment. I've had a
19 chance to study those. There are three specific issues that
20 have come up that I want to talk to the parties about. So
21 there is an argument that the defense has that the defendant's
22 criminal history category overstates the seriousness of his
23 criminal history and that that warrants departure or variance.
24 I want to hear from the defense on that first and then hear
25 from the government. So that will be the first issue I want

1 to take up.

2 The government has asserted in its papers that the
3 fact that the threat was made against the victim's family
4 member is a potential ground for an aggravating factor that I
5 should consider in sentencing. I want to hear your argument
6 and the defense's response on that.

7 And then the matter that I need the most help on is
8 with respect to the defendant's provocation argument and how
9 that should affect this particular sentencing judgment, and I
10 want to focus on what I see -- and maybe there's a way to
11 reconcile it, but it seems to me that you -- the parties have
12 vastly different views about the events that immediately
13 preceded the conduct for which the defendant was convicted,
14 and I want to understand both parties' positions on that and
15 what your reactions are to the other party's take on the
16 sequencing of events because that can affect how I evaluate
17 the provocation argument that the defense is presenting.

18 So I want to deal with those three things in that
19 order, and then I'll turn to the government and have it make
20 its argument for sentence and then the defense. Then I'll
21 give Mr. Cantwell an opportunity to speak.

22 Okay? Everybody understand how we want to go
23 ahead? Okay. So let's start with the overrepresentation of
24 criminal history category argument. I've read your papers. I
25 think I understand your arguments, but if you want to add

1 anything to them, feel free to do that.

2 MR. WOLPIN: Yes, your Honor. Our argument stems
3 from the fact that obviously we have a point based system that
4 does its best to approximate prior past behavior through
5 certain variables like length of sentence. As discussed in
6 what we filed, that gets I think more complicated in a time
7 served scenario, because it becomes less evident that the
8 sentence length imposed is truly a proxy for the seriousness
9 of the offense.

10 In this case there was a situation where Chris
11 appeared in court, left that day and left the state as
12 required, and that was simply the end of it.

13 Whether a court in another sort of hypothetical
14 world where he was not held pretrial that appeared with no
15 days or ten days or five days or whatever it might have been
16 would have similarly reached a sentence as here, it is
17 unclear.

18 THE COURT: Let's make this concrete, okay? So
19 let's start with-- which of the convictions are you arguing
20 aren't really dealt with in a way that's consistent with the
21 underlying purposes of the sentencing statute, and let's take
22 them one at a time and identify what points are assessed and
23 why you think those points produce overrepresentation.

24 MR. WOLPIN: Yes. All right.

25 So the points that are scored in this case only

1 come from two incidents or two sets of conviction. The first
2 is a 2009, and I'm on page 15 of the PSR.

3 THE COURT: Got it. Paragraph 61?

4 MR. WOLPIN: Correct.

5 And then paragraph 62, which is two points from a
6 2017/2018.

7 In this situation -- this argument focuses on the
8 last --

9 THE COURT: So he gets one point based on 61 and
10 gets two points based on 62, but then he gets another two
11 points because of the supervision essentially that adds to
12 this offense while on supervision.

13 MR. WOLPIN: Correct.

14 THE COURT: All right. And so what do you want to
15 say as to 61?

16 MR. WOLPIN: So as to 61, this becomes a question
17 of date. It falls really right at that relatively arbitrary
18 ten-year mark. So I understand there needs to be arbitrary
19 rules and timing and that is not illogical. However, it does
20 lead to circumstances where if one has committed something
21 just a couple months before, it would count as zero as opposed
22 to one.

23 THE COURT: So what we're talking about is the
24 equivalent of a DUI charge?

25 MR. WOLPIN: Correct.

1 THE COURT: And that was in 2009 and he was
2 assessed one point for that.

3 MR. WOLPIN: Correct.

4 THE COURT: If the charge had occurred how much
5 earlier would it be zero?

6 MR. WOLPIN: Well, our argument would be this
7 offense begins in June, ends in June of 2019. So this would
8 have been March. So if this -- the conduct, your Honor, in
9 our position predates the ten-year mark. The conviction for
10 whatever reason took 16 months or so to actually be entered.

11 So had this case simply resolved in a more
12 expeditious manner, our argument is this would have counted as
13 zero.

14 THE COURT: All right. So your view is if it's
15 close to the ten-year cutoff, it meets it technically but not
16 practically because the conduct that gave rise to conviction
17 well predates the ten-year period and it seems to be just a
18 delay in processing the case which results in the conviction
19 being within the ten-year period and the one point therefore
20 is excessive.

21 MR. WOLPIN: Fair. Yes.

22 THE COURT: Okay. Got it.

23 What do you want to say? Do you agree that two
24 points is warranted based on 62?

25 MR. WOLPIN: Correct. So how that sentence was

1 imposed, it imposed greater than 60 days of jail time. This
2 case began as a number of felonies, ultimately resolved as
3 misdemeanor offenses with time served resolutions.

4 THE COURT: These are the Charlottesville -- one of
5 the Charlottesville convictions?

6 MR. WOLPIN: There are two together that are
7 misdemeanors charged from the same incident.

8 THE COURT: Okay.

9 MR. WOLPIN: And --

10 THE COURT: He gets points for one but not the
11 other because they occurred on the same day.

12 MR. WOLPIN: Because it's all the same, yes. It
13 ultimately is.

14 THE COURT: The government points out he assaulted
15 two different people, each one resulted in a conviction, but
16 they don't count -- you don't double count the points. You
17 just get two for that.

18 MR. WOLPIN: Correct. And my understanding of what
19 these allegations were, it's a single spray of OC spray.
20 There were two people that were named as being sort of
21 affected by that and that's why there are two charges. So it
22 truly is the same act even though there ended up being two
23 convictions.

24 THE COURT: Well, yeah, they are two distinct
25 victims -- you're saying that -- are you making the contention

1 that it was a single spray that hit two people?

2 MR. WOLPIN: That's my understanding of the facts
3 of that case, correct.

4 THE COURT: Okay. All right. Got you.

5 MR. WOLPIN: So from our position -- again, I
6 understand why when this case started as a felony there may
7 have been, you know, a detention --

8 THE COURT: Let me just go back to this single
9 spray issue. Whether it was a single spray or not still would
10 only be two points for the two convictions, wouldn't it?

11 MR. WOLPIN: Yes.

12 THE COURT: So that point is like not determinative
13 of whether the two points is appropriate or not.

14 MR. WOLPIN: No.

15 THE COURT: Two points and only two points should
16 be assessed based on those two convictions under the guideline
17 whether it is a single spray or two distinct sprays that
18 occurred in close proximity to each other with no intervening
19 arrests, et cetera.

20 MR. WOLPIN: Yes.

21 THE COURT: Okay. That's your position, but you
22 agree two points is the right assessment for that.

23 MR. WOLPIN: Correct.

24 THE COURT: Okay. So you have a problem with the
25 two points based on the commission of the offense -- I want to

1 say under supervision. That's sort of a traditional way we
2 talk about it. What do you want to say about that?

3 MR. WOLPIN: I want to say that -- in relation to
4 this offense, yes.

5 So there was an unsupervised good behavior period
6 which was imposed as part of a 2017 case. That ends up
7 causing what are misdemeanors to jump from what was originally
8 two points to four points total for that offense.

9 THE COURT: Wait, wait, wait. I'm not
10 understanding you. What do you mean?

11 MR. WOLPIN: So it starts as two points as noted in
12 the, sort of within that section on paragraph 62. Then this
13 criminal justice sentence issue elevates that another two
14 points. So we're at a total ultimately of four points that
15 originate, I understand originates from the criminal justice
16 sentence provision but ultimately stems back from that.

17 THE COURT: Well, it comes from the fact that while
18 he was under this period he committed the offenses of
19 conviction here, right?

20 MR. WOLPIN: Right.

21 THE COURT: So it's not like it changes a
22 misdemeanor to a felony. It doesn't do that at all. It's
23 basically if you're -- if you're being -- in the typical case
24 we have where you're being supervised -- if you commit a crime
25 while you're being supervised, you get extra points added on

1 because we need to be holding people who are supposed to be
2 under special supervision terms to a greater responsibility to
3 avoid criminal conduct. And when they do it, it shows they're
4 not being rehabilitated by the prior sentence and therefore
5 justifies the imposition of more points. That's the way I
6 understand it works. Is that -- my thinking of it
7 incorrectly?

8 MR. WOLPIN: No.

9 THE COURT: Okay. So that's what happened here,
10 and your point is that because he was not being formally
11 supervised by probation you think that it's improper to give
12 the two points.

13 MR. WOLPIN: I'm not arguing from a legal
14 standpoint that that is not what the guidelines call for. I'm
15 arguing from a consideration of how the points are being --
16 reflecting the history, yes. I think that unsupervised
17 conditions of supervision or nonsupervision, just good
18 behavior, are so routine and commonplace, don't have that
19 rehabilitative function with supervision, that I think it
20 stretches beyond -- even though technically within the rule it
21 stretches beyond two points and sort of ends up having a
22 significant impact beyond what I think that good behavior
23 period should reflect.

24 THE COURT: Okay. I understand your argument.
25 Basically then you're saying treat -- don't treat -- don't

1 give him one, effectively give him one for what happened with
2 the DUI of ten years ago. Don't give him two. And if he's
3 left with that, he only has two points so he would be a II
4 rather than a III, right? That's your position?

5 MR. WOLPIN: Yes.

6 THE COURT: And did you want to say anything else
7 about that?

8 MR. WOLPIN: No, your Honor.

9 THE COURT: All right. What does the government
10 want to say in response?

11 MR. DAVIS: Your Honor, the standard is whether a
12 Criminal History Category of III substantially overrepresents
13 either the risk of recidivism or the seriousness of the
14 history.

15 As we argued, the defendant cannot meet that burden
16 of showing substantial overrepresentation. He's got five
17 criminal history points on this calculation. As we argue,
18 there are seven criminal convictions that result in precisely
19 zero criminal history points. Those are nonetheless
20 convictions and they bear on the seriousness of his offense
21 and certainly the seriousness of his criminal history, and the
22 recent ones --

23 THE COURT: The ones prior to 2009, the ones
24 reflected in paragraphs 56 through 60 are offenses that
25 occurred in 1997, 1998, and 2000, right?

1 MR. DAVIS: Yes.

2 THE COURT: So they're a long time ago when he
3 was --

4 MR. DAVIS: They're old convictions, yes.

5 THE COURT: They're old convictions for which he
6 served a total of 45 days -- or no, he also did 60 on the
7 criminal possession of a weapon.

8 MR. DAVIS: Yes.

9 THE COURT: So he did 60 on that and 45 days on the
10 operating under influence charge.

11 MR. DAVIS: Yes.

12 THE COURT: Okay.

13 MR. DAVIS: And two of them, your Honor, are much
14 more recent. One of them is the -- one of the assaults and
15 batteries in Charlottesville.

16 THE COURT: Well, the defense agrees that he
17 deserves the two points for that.

18 MR. DAVIS: Right. But the point is there is
19 another one that's a zero that does not result in more points.

20 THE COURT: Yeah, but the guidelines specifically
21 think about why you should not give points for those -- the
22 fact that there are two convictions why the guidelines
23 shouldn't give points.

24 MR. DAVIS: Right.

25 THE COURT: I don't have to accept his single spray

1 argument to say, oh, it was -- he shouldn't get an extra two
2 points.

3 MR. DAVIS: Right.

4 THE COURT: Like if it were two sprays separated by
5 half an hour during the course of this demonstration, it would
6 still only be two points.

7 MR. DAVIS: Yes.

8 THE COURT: Okay.

9 MR. DAVIS: Although it's even closer because under
10 4A1.1(e), if the assault and battery in Virginia was a "crime
11 of violence," then another point would be added, and the issue
12 there is that --

13 THE COURT: Why doesn't it qualify as a crime of
14 violence?

15 MR. DAVIS: Because it's not categorically a crime
16 of violence I don't think, and we're not saying that it is,
17 but it's close. The only point being --

18 THE COURT: That's part of the fundamental
19 misjudgment by the United States Supreme Court to use a
20 categorical approach which restricts the power of a judge to
21 actually look at what happened. I can't look at what happened
22 and say, oh, you should get points or not get points based on
23 what actually happened in the case. I have to look at the
24 offense of conviction, and you're saying this offense of
25 conviction is not categorically a crime of violence even

1 though by its terms because it's an assault conviction you
2 would think, oh, that's got to be a crime of violence, but it
3 isn't and because we have to use this categorical approach I
4 can't dig into the underlying circumstances.

5 MR. DAVIS: And I'm not arguing that you should,
6 your Honor. I'm only saying this is a discretionary call on
7 your part. The defendant is asking for a departure. The
8 Court can assess anything and everything, and all the
9 government is saying here is the defendant missed by a hair
10 getting another point because that was almost a crime of
11 violence.

12 The question is whether this criminal history score
13 somehow substantially overrepresents his record or whether
14 he'll recidivate, and we're just saying there are a lot of
15 things here where he ekes out a no score.

16 We also argue the Charlottesville misdemeanors are
17 not your ordinary misdemeanor. There's the Unite the Right
18 rally. There are guys driving from New Hampshire with an
19 armory of weapons, including guns and knives, who is in that
20 march and is in a confrontation.

21 And, yes, he scrapes by with misdemeanor
22 convictions, only one of which counts, but that's another
23 consideration for the Court. Are these misdemeanors that are
24 meaningless or are they misdemeanors that say something about
25 criminal intent or the likelihood of more crimes?

1 THE COURT: All right. So you recognize that I
2 can't do that in determining how many points to assess.

3 MR. DAVIS: Correct, correct.

4 THE COURT: But you're saying I can do it and
5 should do it with respect to evaluating a request for a
6 departure.

7 MR. DAVIS: Yes.

8 THE COURT: Okay.

9 Do you have some argument that I am not permitted
10 to do what the government says that he's asking me to do?

11 MR. WOLPIN: No. I do think it is a broader
12 consideration of his record is sort of the version the Court
13 is looking at.

14 THE COURT: Okay.

15 MR. WOLPIN: I mean, this is not a categorical
16 issue because these are misdemeanors and they're not crimes of
17 violence because the penalty doesn't exceed one year. So that
18 is not the sort of question that -- it would never have been a
19 crime of violence under the definition because they're just
20 misdemeanor offenses.

21 I don't think the Court should be taking into
22 account the government's version of bringing guns. There was
23 nothing that this charge related to. There was no gun
24 involved. There was no gun ever alleged to be involved.

25 And so to sort of take that as some kind of bad

1 fact that changes the nature of the actual conviction and the
2 actual conduct, I think that's unfair and that I would say is
3 beyond the Court's consideration in looking at his record.

4 THE COURT: I think what he's saying is this
5 two-point assessment is technically a two-point assessment,
6 but it's actually -- when you look at what he actually did,
7 it's worse than two points.

8 So when you are looking at other convictions and
9 saying that's not as bad as the guidelines suggest, you should
10 be able to consider that this particular conviction in the
11 government's view is worse than what the point level suggests
12 and therefore I should exercise my discretion to not depart
13 downward.

14 To me what matters is he's close to the line
15 between a II and III, and I'm looking at whether -- in my mind
16 what weighs heavily when I decide on somebody's criminal
17 history and I exercise discretion about it, it's how has that
18 person been treated by the criminal justice system for the
19 offenses.

20 So if people have not served substantial prison
21 time for offenses, then that's a factor that weighs in my
22 discretionary judgment as to when someone is close to the line
23 whether he looks more like a II than a III. People who have
24 been exposed to the criminal justice system and have received
25 substantial prior sentences, in other words, where we try to

1 hold them to account and they still aren't deterred from their
2 criminal conduct, that's a reason to be cautious about
3 granting a close-to-the-line horizontal departure.

4 Cases where someone may have accumulated a number
5 of convictions that technically move him from a II to a III
6 but who hasn't served substantial prison sentences, has had
7 less opportunity to have the ability of a sentence to deter
8 him, to be tested. So that's a factor that weighs
9 significantly in my judgment on that.

10 Did you want to say -- I was interrupting you,
11 counsel. Did you want to go back and say anything more about
12 the criminal history category issues?

13 MR. DAVIS: I don't think so, Judge.

14 THE COURT: I've read your memorandum and I think I
15 understand your position.

16 Okay. Let's turn to your issue. You point out
17 that the guidelines recognize that it can be an aggravating
18 factor in a threatening case if there's -- if a threat is
19 directed to a victim's family member as it was in this case.
20 I understand your point quite well. I did want to give the
21 defendant an opportunity to respond to it.

22 Did you want to say anything more about that?

23 MR. DAVIS: Only that we are not seeking an upward
24 departure.

25 THE COURT: But it's an aggravating factor.

1 MR. DAVIS: Sure.

2 THE COURT: That when I consider where to sentence
3 him within whatever range I land at, or when I consider
4 whether to vary downward, you're saying take that aggravating
5 factor into account, right? I think that's what you're
6 saying.

7 MR. DAVIS: Yes.

8 THE COURT: Okay. It is what it is. It was a
9 threat against the victim's family. The guideline book
10 recognizes that is potentially an aggravating factor. He's
11 not arguing for an upward variance, but it is a factor that I
12 feel that I would be inclined to take into account in
13 sentencing unless you can convince me that it's not something
14 that I should consider at all here.

15 MR. WOLPIN: I would say it fits within the nature
16 and circumstances of the offense for sure. I think there are
17 some points to address around that issue, though.

18 THE COURT: You can do that -- if you want to do it
19 as a whole towards the end sort of like in this case
20 fortunately the victim's spouse was not informed of the
21 threat, so in that sense it wasn't quite as bad as it might
22 have been, you know, you can make those kind of totality of
23 circumstances arguments later. But again, it is what it is.
24 It's a potential aggravating factor. It's something I'm
25 inclined to take into account. Legally you're not telling me

1 I can't do that. You're saying consider it in the context of
2 the entire case, Judge, and it won't be as big a factor as the
3 government says it should be.

4 MR. WOLPIN: Correct.

5 THE COURT: Got it. Okay. Now let's get to the
6 issue that I'm most confused about and maybe you can easily --
7 it seems that you disagree fundamentally about what
8 precipitated the criminal conduct by the defendant in this
9 case.

10 Your position is, as I understand it, this was a
11 long-standing plan to get dox on Vic Mackey and the defendant
12 had a long-standing plan to try to compel people to give him
13 dox on Vic Mackey, and that on the day that the particular
14 extortion and threats that occurred here occurred it was not
15 the victim who provoked the defendant. It was the defendant
16 who before the victim did anything had posted a picture of the
17 defendant's family, where as I understand you seem to be
18 taking the position that's not the sequencing of the events;
19 that there was a decision by the victim to go on to
20 the Telegram site that the defendant was involved in, and that
21 it was that action that precipitated publication of the
22 blurred image and precipitated the discussion that you say led
23 to an implied threat against Peach, the defendant's
24 friend/wannabe girlfriend, and that that is what provoked the
25 extreme criminal behavior by the defendant.

1 So you think of it more as an extortionate plan
2 that developed over a long period of time and that wasn't
3 precipitated by some bad conduct by the victim, but that the
4 immediate precipitating event was the victim happened to go on
5 to a site he didn't know the defendant was associated with.
6 The defendant had already posted an image of the victim's
7 family. The victim tried to deescalate matters, and it was
8 the defendant who was aggravating the situation and that
9 prompted the Peach conversation.

10 Do you agree your version seems to be in conflict
11 with the defense version?

12 MR. DAVIS: Yes, I think the spirit of it is. I
13 think we agree on a lot of facts but --

14 THE COURT: But it does seem to disagree about when
15 this first photo of the family was published. You say it
16 occurred before the victim entered into the website that the
17 defendant was affiliated with.

18 MR. DAVIS: Right.

19 THE COURT: The defense doesn't expressly say
20 that's wrong but appears to describe an account that's
21 inconsistent with the one you describe.

22 So it is your contention, is it not, that the
23 sequence -- what happened that day was, first, the picture,
24 the blurred picture was published. Then the victim entered
25 the site. Then the exchanges occurred. The victim tried to

1 deescalate. The defendant refused to deescalate. Then they
2 had the discussion where Peach was mentioned. Then the
3 defendant made the threats that led to his conviction.

4 Have I got your view of the sequencing right?

5 MR. DAVIS: Yes. So the government doesn't know
6 all of the facts -- it knows a few things. What it knows is
7 that the person known as Peach sent a message to Mr. Cantwell
8 that's dated very early on June 15th of 2019, and what Peach
9 is doing there is sending a query by someone else, it's not
10 clear who it is, but asking basically why did you take those
11 pictures of his family.

12 And so it's clear that those pictures had been
13 posted. People have seen them. People know that Peach was
14 the person who was the source of those photos and people are
15 asking Peach questions. And again, the date of the screenshot
16 that Peach sends to Mr. Cantwell was very early on June 15th.

17 Now, is that screenshot accurate? Do the dates
18 work out? Is there --

19 THE COURT: I thought your memo did a pretty good
20 job of stating what I thought your version was.

21 So what you've alleged on page 3 of your memorandum
22 is that the defendant began a campaign to unmask Vic Mackey in
23 late February.

24 MR. DAVIS: Correct.

25 THE COURT: And you post something that the

1 defendant said, and then you say that in March he threatened
2 to dox the victim.

3 MR. DAVIS: Directly, yes.

4 THE COURT: And said: When I do, it will all be
5 because of Vic.

6 So you say this is a plan that is unfolding in
7 February and March.

8 MR. DAVIS: Yes.

9 THE COURT: And you provide what you say are
10 supportive postings that document that.

11 MR. DAVIS: Correct.

12 THE COURT: You allege that -- you acknowledge that
13 there was this extreme I would call it a trolling campaign
14 against Mr. Cantwell's site by the Bowl Patrol. They were
15 trying to disrupt his site during this period and that was
16 extraordinarily frustrating for him. I don't think you
17 dispute the fact that the victim was involved in some way in
18 that campaign. He was making calls.

19 MR. DAVIS: Yes.

20 THE COURT: But you allege that those calls had
21 largely ceased involving the victim and a substantial period
22 of time went by where there's no evidence that the trolling
23 behavior involved the victim and there's no evidence that it
24 was continuing at the same clip for a significant period of
25 time.

1 MR. DAVIS: Correct.

2 THE COURT: And so then we get to the dates in
3 question, which is in June, and what I understand your memo to
4 suggest is it was the defendant, not Mr. Lambert, who
5 commenced hostility. When first posted, the faces in the
6 photos were apparently blurred. Part of the defendant's plan
7 to proceed incrementally with Mr. Lambert. The defendant
8 admitted to publicly posting the photograph in his exchange
9 with Mr. Lambert the following day.

10 MR. DAVIS: Yes.

11 THE COURT: And that was all before Mr. Lambert
12 inadvertently went on to the site that Mr. Cantwell was
13 associated with.

14 MR. DAVIS: Well, the admission the defendant is
15 making is that in the course of the Telegram app
16 communications that are the subject matter of the case.

17 THE COURT: Yeah, but you're implying that the
18 posting predated --

19 MR. DAVIS: Yes. But the posting itself -- because
20 of the Peach screenshot, the posting itself predated this
21 event.

22 THE COURT: Okay. And I do remember seeing
23 exhibits to that effect at the trial. I'm just asking you to
24 refresh my memory about exactly what your evidence is that
25 supports that contention.

1 MR. DAVIS: If I may, your Honor?

2 THE COURT: Yeah. And I don't mind if both of you
3 talk. I'm more in the free-for-all category with these
4 things.

5 MR. DAVIS: Yes. Judge, it's in document 123-4 and
6 it starts with -- it's a screenshot. It says June 15th.

7 THE COURT: Yeah.

8 MR. DAVIS: But the first time on it is 12:47 a.m.
9 So it's very early on June 15th if that is correct, and
10 there's also a time difference because Peach may well be in
11 California at the time and there may be a three-hour
12 difference.

13 THE COURT: Would you read the exchange?

14 MR. DAVIS: Yes. "Hello Katelyn. So why did you
15 take pictures of those kids?"

16 THE COURT: Okay. That's a communication to Peach
17 from someone we don't know?

18 MR. DAVIS: Correct.

19 THE COURT: At a particular time?

20 MR. DAVIS: Correct.

21 THE COURT: And you're saying that's evidence of
22 the fact that that image had been posted by that point?

23 MR. DAVIS: Correct. And the defendant's statement
24 to Cheddarman in the Telegram app confirms that because the
25 defendant is the one who says: The next time they won't be

1 blurred.

2 THE COURT: Next time I post. Okay.

3 MR. DAVIS: And it's all sort of -- the victim
4 doesn't know what he's talking about at that moment, right?

5 THE COURT: Yeah.

6 MR. DAVIS: And then when Mr. Cantwell provides --

7 THE COURT: And then when does the victim log on to
8 the site that Mr. Cantwell is associated with?

9 MR. DAVIS: On the evening of June 15th.

10 THE COURT: So the exchange with Peach telling us
11 that the image had been posted by that point in your view
12 occurred early in the morning on the 15th?

13 MR. DAVIS: Yes.

14 THE COURT: And the entry into the Cantwell
15 affiliated Telegram site did not occur until the next day.

16 MR. DAVIS: Well, that same day. But, yes, the
17 following evening, correct.

18 THE COURT: In the evening of that day.

19 MR. DAVIS: Yes.

20 THE COURT: Okay. And then it was -- then when did
21 Mr. Cantwell post: The next time I post that photo the faces
22 won't be blurred, and then you'll be going to start getting
23 unexpected visitors.

24 When did he post that? That says 4:45 according to
25 your --

1 MR. DAVIS: He sent an unblurred photo as part of
2 the Telegram exchange. That's one of the photos that's part
3 of the Telegram exchange. So he actually showed it to the
4 victim as part of the Telegram exchange.

5 He also posted it on his own podcast or whatever
6 his group is called on the night of the 16th.

7 THE COURT: When did Mr. Cantwell first communicate
8 with the victim about the fact that he had gone on the
9 Telegram app?

10 MR. DAVIS: At approximately 8:00 p.m. It's the
11 first time on the Telegram app sequence. It's June 15th.

12 THE COURT: Yeah.

13 MR. DAVIS: So the whole sequence begins on the
14 evening of June 15th. I'm sorry, I'm not looking at the --

15 THE COURT: I don't have all the exhibits in front
16 of me, but am I understanding your position is that what
17 happened is the blurred image was posted, someone communicated
18 with Peach about why the image was being posted, much later
19 that day the victim enters the Telegram site, and following
20 that the defendant initiates communication with the victim and
21 the victim tries to deescalate by saying, hey, I don't want
22 anything to do with you, essentially, and then what followed
23 were the communications where Mr. Cantwell refused to
24 acquiesce in that approach, and that led to the Peach comment
25 which led to Mr. Cantwell engaging in the criminal act?

1 That's the sequencing of what you think is what happened on
2 the 15th?

3 MR. DAVIS: Yes, as supplemented by Mr. Cantwell's
4 testimony at trial which did not fully explain the posting of
5 the photo but did acknowledge that he was having two
6 communications at once at various times with Peach, that he
7 was talking to Peach and he may well have been getting
8 additional photographs or getting photographs ready to use as
9 part of his doxing campaign with the address of the victim.

10 So this whole chrono, your Honor, stems from the
11 date stamp on the screenshot that Peach sent to Mr. Cantwell
12 because that's what we have and it says June 15th, and then it
13 says 12:47 a.m. on June 15th.

14 But what seems clear beyond any doubt is that the
15 blurred photo had been posted by that time. If that time is
16 accurate, the blurred photo had been posted because someone is
17 reaching out to Peach and asking her about it and she's
18 involved enough and engaged enough that she's sending that to
19 Mr. Cantwell immediately.

20 THE COURT: Okay. All right. So that's your view
21 about the sequencing of the event.

22 Let me just hear from the defense about what's
23 wrong with the sequencing of the --

24 MR. WOLPIN: I do think there's a fundamental sort
25 of factual disagreement about the sequencing of the events.

1 It is correct that Peach sent this message to Chris
2 that's attached to our sentencing memorandum that is from June
3 15th.

4 There is no posting of a blurred photo --

5 THE COURT: What time is reflected as the posting
6 time?

7 MR. WOLPIN: Morning. Early morning on June 15th.

8 THE COURT: All right. And you don't disagree that
9 the victim entered the Telegram site in the evening of the
10 15th?

11 MR. WOLPIN: Correct.

12 THE COURT: Okay.

13 MR. WOLPIN: Later Cheddar Mane joins this chat
14 group. It's Cheddar Mane's joining of the chat group that
15 then prompts Chris to ask Peach for the photographs. The
16 photographs are then blurred. They are then posted -- our
17 sequence does not involve blurred photographs being posted
18 prior to the participation in this online chat between Cheddar
19 Mane and Chris. That's the fundamental difference.

20 THE COURT: You're saying that Peach and the
21 defendant were communicating in the early morning of the 15th,
22 but they weren't communicating about a blurred image and no
23 blurred image had been posted as of that point?

24 MR. WOLPIN: No. It was after joining the chat.
25 As the government noted, there was back and forth that

1 continued with Peach and Chris. At that point is when he got
2 the photos, blurred them, they went up, and then there's a
3 reference to them within the chat.

4 So it is certainly our position that the
5 photographs were not --

6 THE COURT: When do you say the defendant posted
7 the blurred image of the victim and his family?

8 MR. WOLPIN: Once that Telegram -- again, I don't
9 know the exact time, but once that Telegram interaction in
10 that chat group, or ultimately not a group but individual chat
11 occurred, it followed from that, not before.

12 THE COURT: Okay. So that seems to be a
13 fundamental difference between you. I know you argued
14 otherwise at the time of the trial, that's my recollection at
15 least, about when that blurred photo was posted. You argued
16 that it was posted before the Telegram chat. That's my -- the
17 exchange about the Telegram entry.

18 If I'm misremembering that, you'll tell me, but you
19 had a sequence of exhibits that purported to support your view
20 of the timeline. Those exhibits should be still available to
21 you. You should still be able to get them and walk me through
22 them so that I can see the actual documents.

23 Well, let's be clear. Why is this relevant? This
24 is relevant because you agree -- you acknowledge that the
25 sentencing guidelines recognize that provocation in a case

1 like this under certain circumstances can be a basis for a
2 downward variance, right?

3 MR. DAVIS: Yes.

4 THE COURT: Okay. So you understand they're
5 asserting my client was provoked and you should vary downward
6 because he was provoked. And your response to that argument
7 is to say, this wasn't provocation, Judge. This was a
8 long-standing plan that the defendant developed months before
9 he committed the criminal acts to use threats to extort the
10 victim to give him dox on Vic Mackey. And even on the day in
11 question it wasn't the victim who provoked, it was Mr.
12 Cantwell who was provoking by putting out that blurred image.

13 That's your argument, isn't it?

14 MR. DAVIS: Yes.

15 THE COURT: Okay. So I just want to be sure
16 factually, if you can support that, that I know exactly what
17 the sequence of evidence is.

18 You say, he's got the facts wrong, Judge. That's
19 not what happened. There wasn't a long-standing plan to
20 provoke. There was frustration, and, yes, he wanted Vic
21 Mackey's information, and, yes, he was mad at the victim, and
22 he thought Vic Mackey was leading the Bowl Patrol and that's
23 all he was saying in those early communications, and this
24 wasn't a plan -- a long-standing plan to extort by threat
25 information. The defendant lost it, Judge, when his wannabe

1 girlfriend, Peach, was impliedly threatened, and that made him
2 go over the line.

3 That's what you're saying happened, right?

4 MR. WOLPIN: Yes.

5 THE COURT: And those are two very different takes
6 on the case because you would agree, would you not, that
7 provocation is less compelling as a justification for a
8 variance if the provocative act occurred months in the past,
9 the defendant waits months and months and months and then
10 claims provocation when he acts improperly, and it's also not
11 appropriate to use provocation as a downward variance where
12 the defendant engages in a conduct that produces a response
13 that causes the defendant to be provoked.

14 So understanding what's really happening with these
15 facts is important insofar as it bears on your argument for a
16 downward variance based on provocation. That's why I'm
17 asking -- it may sound like, why is the Judge getting bogged
18 down on these little details? Because you're each telling a
19 different story factually, so I need to know which one to
20 believe.

21 MR. WOLPIN: Your Honor, if I might, I hate to do
22 this, ask for a brief break. I would like to take a look back
23 at some paperwork that we have in relation to this and make
24 sure that we're --

25 THE COURT: I would like the government to come

1 forward with its exhibits and walk me through and show me
2 sequentially why it is the government thinks the defendant's
3 characterization of the case is wrong, and if you have
4 evidence to support your characterization of the case, I'd
5 like to see it. Because my recollection is that this was an
6 issue between you even during the trial that neither of you
7 focused on in great depth, but it was something that I was
8 aware of during the trial that you seem to have different
9 views about the sequencing of the relevant events here. And
10 because you're raising a provocation variance, it's important
11 for me to do the best I can and try to make sense of that
12 evidence when I evaluate your provocation variance.

13 MR. DAVIS: The only thing I would say about that,
14 Judge, is I don't think there's any disagreement, though, that
15 the posting of blurred photos occurred prior to -- if the
16 provocation is, I guess Peach took those photos, I guess you
17 don't care what happens to her, so that's an event. That's
18 something said in the Telegram messages. The Court has seen
19 that. We can show you that.

20 But there's no doubt that before that was said,
21 this defendant placed in a place where the public could see it
22 blurred photos of the victim's wife and family and people did
23 see it and people did communicate with Peach and he's on the
24 phone with Peach while this is happening and --

25 THE COURT: Let me try to tell you what I think the

1 defense is saying here, okay?

2 MR. DAVIS: Okay.

3 THE COURT: What I think the defense is saying is
4 what happened here was these guys embarked on a group effort
5 to destroy my means of making a living and that made me really
6 mad and I wanted it to stop, and I tried all means available
7 to me to get it to stop, and these people, including the
8 victim, persisted.

9 What happened on June 15th that set me off was I
10 found the victim lurking at one of my Telegram sites and that
11 pissed me off and I posted a blurred image. So it was, the
12 immediate precipitating event was started by the victim and
13 not me. He came on to my site. I posted a blurred image. We
14 then had the exchanges we had. During that exchange I
15 threatened. He tried to deescalate. I wouldn't accept the
16 deescalation. He made a comment about Peach. I took that to
17 be a threat to Peach. That made me really angry. I flipped
18 out, lost control, and made threats that turned out to be
19 criminal. And that's exactly the kind of provocation that the
20 guidelines say a judge should take into account.

21 You say it worked very differently. You say he had
22 a long-term plan to extort members of the Bowl Patrol to give
23 up Vic Mackey. He focused on the defendant as a way to do
24 that. Months go by. He has an opportunity to do it again.
25 He posts an image, a blurred image of the victim's family to

1 try to again threaten the victim to get him to give up Vic
2 Mackey. He then contacts the victim and they have the
3 exchanges that they have. The contents of which are not in
4 dispute.

5 So your view is it was a preexisting plan. Your
6 view is immediate precipitating events on June 15th were
7 started by the defendant, not the victim, and those are
8 important facts that should affect your judgment about whether
9 there was any provocation here, right? Isn't that what you're
10 saying?

11 MR. DAVIS: Except that we also don't agree that
12 wandering into the chat group and whatever the victim did was
13 provocation at all under 5K2.10. It was an annoyance, it was
14 irritating, but the guideline talks about --

15 THE COURT: I'm not saying that the defendant's
16 version of facts is true, that he's entitled to a variance.
17 I'm just saying a judge should try to determine what the
18 actual facts are to the extent the judge can before the judge
19 makes a judgment about how to exercise discretion to consider
20 a concept like provocation.

21 MR. DAVIS: Right.

22 THE COURT: I just want to get the factual record
23 straight.

24 MR. DAVIS: So the record is this man had a real
25 beef with the Bowl Patrol. He wanted to dox Vic Mackey.

1 THE COURT: All right. That much is undisputed.

2 MR. DAVIS: He said that he would dox other Bowl
3 Patrol members when he could, and he posted that in February
4 or March of 2019. He did then dox Mosin-Nagant at the end of
5 February of 2019 and got him out. Then on March 17th of 2019
6 --

7 THE COURT: I get all of that. You make the --
8 wait. You make the following statement: It was the
9 defendant, not Mr. Lambert, who commenced hostilities on the
10 15th.

11 He says it wasn't the defendant who commenced
12 hostilities on the 15th.

13 MR. DAVIS: Then why does the screenshot from Peach
14 say June 15th, 12:47 a.m.?

15 THE COURT: I want you to make your record. I
16 don't have to just take your word for it. You've got all
17 these exhibits. If you went back and refreshed your memory
18 about how you proceeded at trial, you should be able to say
19 here's our view, Judge, here are the following five exhibits.
20 Let me produce copies of them. You can read them. Draw your
21 own conclusions, Judge. That's all I'm saying. You should be
22 able to do that. It's not an unreasonable request.

23 And apparently the defendant wants an opportunity
24 to take a short break and marshal its evidence just so I can
25 make the record. I'm not saying even if everything the

1 defendant says is true that I would grant a variance, okay?
2 I'm just saying I've got to do my job here, which is make sure
3 I understand the factual record as best I can before I make an
4 important decision. That's all I'm asking.

5 I mean, are you willing to do that if I give you a
6 fifteen-minute break to come back and -- with your exhibits
7 and you can look at the trial exhibits, they're all there, and
8 say here are the relevant ones, Judge, and here's how we
9 interpret them. If you have other exhibits, you can say here
10 are the relevant ones, Judge, here's how we interpret them. I
11 will then have the record and I'll make my best judgment.
12 That's all I'm asking.

13 MR. DAVIS: That's fine, your Honor.

14 Just one other thing, Judge. On the sentencing
15 memo, page 9, of the defendant, Mr. Cantwell, it says: In
16 June of 2019, the day prior to the online encounter at the
17 heart of this case, Christopher's ex-girlfriend known as Peach
18 forwarded Christopher an electronic communication she had
19 received, Exhibit D. Christopher understood this
20 communication, so why did you take picture of those kids, to
21 reference photographs that Peach took of Cheddar Mane's
22 children in the fall of 2018.

23 The defendant's own pleading acknowledges that the
24 day before June 15th Mr. Cantwell gets a text message or a
25 screenshot from Peach, and what he knows is going on is there

1 are photos posted of the victim's family, his wife and
2 children, and Peach is getting questions about it. That's
3 what he says.

4 THE COURT: All you've got to do is make some
5 photocopies of a few documents, put them in the right
6 sequence, and hand them to me and say, look at this, Judge.
7 Start with this one and then go to that one, and you'll see
8 the actual evidence that supports what I'm saying.

9 Is that too much to ask of you?

10 MR. DAVIS: It is not, Judge.

11 THE COURT: All right. Good.

12 And you'll do it from your perspective.

13 We'll take a short break. When you're ready, we'll
14 come back and finish this thing.

15 I just want to understand each party's position and
16 the evidence supporting it so that I can make my own judgment
17 about it. I mean, I'm making an important decision that
18 affects a person's life. I want to be sure I do it on the
19 best possible record I can with as little misunderstanding as
20 possible. That's all I'm trying to do.

21 (RECESS)

22 THE COURT: So take me through the documents, what
23 story they tell you from your perspective. I'll hear from the
24 defense after.

25 MR. DAVIS: We request permission to use the ELMO.

1 THE COURT: Go ahead. Do we need to turn it on?
2 Is it on?

3 THE CLERK: Yes.

4 MS. KRASINSKI: Your Honor, defense provided us a
5 copy of the broader communications between Peach and the
6 defendant and not just that screenshot, so what I'm going to
7 attempt to do is present a very neutral time frame with that
8 new document. I only have the one copy.

9 THE COURT: Was this an exhibit at trial?

10 MS. KRASINSKI: It was not, your Honor.

11 THE COURT: Okay.

12 MS. KRASINSKI: It's something we just received
13 today.

14 THE COURT: Okay.

15 MS. KRASINSKI: So I'd ask permission to mark that
16 as Government's Exhibit 1.

17 THE COURT: All right. Are you going to refer to
18 any other documents?

19 MS. KRASINSKI: Yes, your Honor. I e-mailed a copy
20 to the deputy clerk, but I also have printed copies.

21 THE COURT: Okay. Great. You can hand me the
22 printed copies.

23 Are other documents being referred to by their
24 trial exhibit number or are we going to mark them separately?

25 MS. KRASINSKI: My plan was to refer to them by

1 their trial exhibit number, your Honor.

2 THE COURT: All right. That's fine. Except for
3 the one document that's new that we're marking. Go ahead.

4 MS. KRASINSKI: So, your Honor, Defense Exhibit
5 B-20 indicates that on March 17, 2019, the defendant first
6 threatened to dox Mr. Lambert: Stay the fuck away from me and
7 my platforms or I'll dox your stupid ass.

8 THE COURT: This is Defendant's B-20?

9 MS. KRASINSKI: Correct, your Honor.

10 And later in that conversation is where the
11 defendant says: When you get doxed, it's all because of Vic.
12 Remember that.

13 THE COURT: Got it.

14 MS. KRASINSKI: Now, in some time of March 2019 the
15 defendant posted: I have dox on several of these Bowl Patrol
16 idiots and I'm gonna -- we assume that says start -- st
17 dropping them until they rat out Vic.

18 And this is Government's Exhibit 304.

19 THE COURT: The date on that again?

20 MS. KRASINSKI: So the date comes from Government's
21 Exhibit 300 from the computer -- the forensic extraction of
22 the defendant's computer. And March 17, 2019, is the date
23 that the screenshot of Government's Exhibit 304, the I have
24 dox post, was saved on the defendant's computer.

25 THE COURT: Okay.

1 MS. KRASINSKI: So this is where the defendant's
2 new exhibit comes into play.

3 Defense Exhibit B-15 is what we've sort of all been
4 looking at before, this message that Peach sent to the
5 defendant on June 15th that the defendant says in his
6 sentencing memo that he understood to be referring to pictures
7 of Mr. Lambert's family.

8 THE COURT: We don't know who is communicating with
9 Katelyn on this?

10 MS. KRASINSKI: That's correct. At trial the
11 defense asked Mr. Lambert if it was Mr. Lambert. He said no.
12 Other than that, there's no evidence of who sent these
13 messages to Katelyn.

14 THE COURT: And that appears to be 12:47 a.m., and
15 we don't know who sent them so we don't know -- that would be
16 the time or the place where the document is posted?

17 MS. KRASINSKI: These were messages received on
18 Katelyn's phone, so it would be the time that she received the
19 message -- or, well, she took the screenshot, but the time of
20 hello Katelyn would be the time she received the message. We
21 believe she resides in California, so that would be the time
22 in California.

23 THE COURT: Okay. Good.

24 MS. KRASINSKI: Okay. So we have always assumed
25 that because the defendant understood this very early June

1 15th message to be referring to pictures of Mrs. Lambert's
2 children that no one could send a message to Katelyn about
3 that photograph --

4 THE COURT: Unless it had been posted.

5 MS. KRASINSKI: Exactly.

6 THE COURT: So that was an assumption you made
7 based on the fact that someone is communicating with Katelyn
8 about what you thought was an image, and it's a reasonable
9 assumption therefore that the image was available in some way
10 over the Internet.

11 MS. KRASINSKI: Correct, your Honor.

12 THE COURT: All right. Go ahead.

13 MS. KRASINSKI: So this is Government's Exhibit 1,
14 the communications that defense provided us, sort of the more
15 complete communications between Katelyn and the defendant, and
16 that frankly changes this a bit.

17 THE COURT: All right.

18 MS. KRASINSKI: So, again, it shows on June 15th
19 that Katelyn sent the defendant the screenshots we just looked
20 at from Defense Exhibit B-15. But then it also shows the
21 defendant's reaction and so --

22 THE COURT: Is this from the defendant's phone?

23 MS. KRASINSKI: As I understand it as it was
24 represented to me, Katelyn provided these screenshots to
25 defense counsel.

1 THE COURT: So this is Katelyn's phone?

2 MS. KRASINSKI: That's my understanding.

3 THE WITNESS: Screenshots that Katelyn took from
4 her phone?

5 MR. WOLPIN: Yes.

6 THE COURT: Okay. And they were provided to
7 defense counsel and not the government.

8 MS. KRASINSKI: Correct, your Honor.

9 THE COURT: The government didn't have these?

10 MS. KRASINSKI: We just received these during this
11 hearing, your Honor.

12 THE COURT: All right.

13 MS. KRASINSKI: So the defendant responds that he
14 doesn't know, but he doubts that the person who sent those
15 messages was Mr. Lambert.

16 THE COURT: Okay.

17 MS. KRASINSKI: And Mr. Cantwell says, I have not
18 leaked that photo and the photo in question has not been
19 published, and then --

20 THE COURT: So the defendant is denying that he
21 posted it.

22 MS. KRASINSKI: And as you read this, it becomes
23 sort of clear that they're talking about different
24 photographs, that the defendant is talking about a photograph
25 of Katelyn with Ben Lambert and one other individual when they

1 were all hanging out together at the Lambert's house.

2 So that conversation began at 2:56 a.m. on June
3 15th. Again, since this is from Katelyn's phone, that would
4 be in California.

5 Later in that conversation, so at 7:51 p.m., the
6 defendant says, give me the address and those pictures, and
7 she sends him images of the defendant's family and address
8 information.

9 And so that is at 7:51 p.m. there, which is
10 approximately 10:00 p.m. here.

11 THE COURT: Okay.

12 MS. KRASINSKI: On June 15th.

13 THE COURT: All right.

14 MS. KRASINSKI: So now we go to Government's
15 Exhibit 100, which is the communication between the defendant
16 and the victim, and at 9:00 p.m. is when the defendant first
17 sends a message to the victim, and at 9:29 p.m. before he asks
18 for the address information from Katelyn, he sends a message
19 to the victim with his street address.

20 THE COURT: Yep.

21 MS. KRASINSKI: Then -- and I should note that
22 these times, the times on Government's Exhibit 100 are Eastern
23 Time.

24 THE COURT: Okay. So we're looking at the
25 defendant's phone, the screenshots?

1 MS. KRASINSKI: Yes, your Honor.

2 THE COURT: All right.

3 MS. KRASINSKI: Then they communicate. At 2:13
4 p.m. the victim tries to deescalate, and the defendant
5 responds at 4:45 p.m.: Next time I post that photo, the faces
6 won't be blurred, and then you're going to start getting
7 unexpected visitors.

8 THE COURT: Is that -- do you contend now that
9 that's when that photo was published?

10 MS. KRASINSKI: At some point before 4:45 p.m. the
11 blurred photo would have been published.

12 THE COURT: And the entry into the Telegram account
13 was when?

14 MS. KRASINSKI: So the entry into the Telegram
15 account that we have is when he posts the unredacted versions.

16 And I want to be clear. No one has been able to
17 recover a copy of the redacted version that he posted so
18 that's why we don't have that date and time information.

19 THE COURT: But you know it was posted by 4:45 p.m.
20 Eastern Standard Time?

21 MS. KRASINSKI: Yes, your Honor.

22 THE COURT: On the 15th?

23 MS. KRASINSKI: On the 16th, your Honor.

24 If we go back to the first page of Government's
25 Exhibit 100, you see that the date -- it rolls -- the

1 conversation rolls from the 15th to the 16th.

2 THE COURT: When did the victim join, what is it,
3 the I Like White People account or --

4 MS. KRASINSKI: Peaceful White Folk.

5 THE COURT: The Peaceful White Folk account, when
6 did the victim enter that?

7 MS. KRASINSKI: The testimony from both the
8 defendant and the victim was consistent on that, that it was
9 essentially immediately before this 9:00 p.m. message.

10 So the victim entered Peaceful White Folk. I think
11 his words were he posted a Heimbach meme, and then he was --
12 the defendant kicked him out of the chat.

13 THE COURT: So my confusion about this stems from
14 your incomplete information about it and the inferences you
15 drew from it. And now that we have seen the full chain, the
16 government understands better the sequencing of events, and I
17 understand now the government agrees that the sequencing is
18 such that the victim entered the Peaceful White Folk account
19 before any pictures were posted of the victim's family and the
20 sequencing of events is otherwise as they are represented in
21 the exhibits that were contributed to the trial. Is that fair
22 to say?

23 MS. KRASINSKI: Yes, your Honor.

24 THE COURT: So we're now at a point where there's
25 no fundamental disagreement between the defense and the

1 government as to the historic facts that lay out the timeline
2 about what the defendant said about the Bowl Patrol people,
3 when the victim entered the Peaceful White Folk account, and
4 all of the exchanges between the defendant and the victim that
5 followed that were captured and produced at trial in the way
6 we understood them to be.

7 So we have resolved that point of confusion. Is
8 that fair to say?

9 MS. KRASINSKI: Yes, your Honor.

10 THE COURT: And from your perspective, you don't
11 have any disagreement with the defense as to the historic
12 facts. You disagree about what inferences should be drawn
13 from them and what significance to attach to them, but the
14 factual record is now undisputed?

15 MS. KRASINSKI: Yes, your Honor.

16 There's one other historical fact that I would just
17 like to point out and that's from Defense Exhibit I think it's
18 I2A, the I series, and this is the defense exhibit showing the
19 victim's call-ins to the defendant's show. And the final page
20 of that shows that there were no calls from the victim --
21 attributable to the victim after February 15, 2019, until
22 after this incident.

23 THE COURT: Okay. Good. Thank you. That was a
24 point of confusion in my mind at the trial and it wasn't
25 important to me because I wasn't a fact finder and provocation

1 isn't a defense to the charge, and clearly the defense did not
2 see any tactical advantage to them in disclosing the correct
3 sequencing, and so now we've resolved that and I can better
4 evaluate the parties' arguments with respect to the
5 provocation defense here.

6 Does the defense want to respond to anything you've
7 heard at this point?

8 MR. WOLPIN: No. I think the fundamental sort of
9 timing question that was at issue with the Court has been
10 resolved. I just note it is consistent as well. I mean, the
11 government did review Chris's phone in relation to this
12 investigation and did ultimately produce a timeline. That
13 timeline shows these photos that we've been talking about
14 coming on to the phone on the 16th, which is consistent with
15 that these were not sort of had for a long period of time or
16 had days before or something like that.

17 THE COURT: All of that makes more sense to me.

18 MR. WOLPIN: Yes.

19 THE COURT: From the very beginning that was a
20 point of dissidence in my mind because trying to put the
21 evidence in the case together logically, there doesn't even
22 appear to be a motivating force for the timing of the release
23 of the blurred image other than entry into the Peaceful White
24 Folk account and therefore would follow logically that it
25 would happen afterwards. To the extent the government was

1 suggesting in pleadings with me that that was not the case,
2 there's a dissidence here and it wasn't making a lot of sense
3 to me and I wanted to try to resolve it.

4 MR. WOLPIN: Thank you.

5 MS. KRASINSKI: Your Honor, one procedural thing.
6 May I move that the public version of Government's Exhibit 1
7 be redacted with the photographs of the minor children
8 redacted?

9 THE COURT: Yes. So in terms of what would be
10 available to the public, we aren't going to disclose the
11 images of the minor children.

12 MS. KRASINSKI: Thank you, your Honor.

13 THE COURT: Okay. So this took longer than I
14 hoped, I apologize, but I need to be -- when I'm confused
15 about something, it makes me nervous because I make decisions
16 that affect people's lives and I don't want to be confused.

17 We've now resolved that point of confusion. I'm
18 ready to hear the defense -- the government's recommendation
19 and anything you want to say about sentencing. I'll then hear
20 from the defense.

21 Please keep in mind, as you know, I studied very
22 carefully your memoranda. You provided me very detailed and
23 helpful memoranda, so you don't need to repeat what's in
24 there. I think I understand it.

25 So what would the government like to say about your

1 recommendation and anything you would like to say in support?

2 MS. KRASINSKI: Your Honor, the government opposes
3 the request for a variance and departure and recommends a high
4 end of the guideline sentence of 51 months of imprisonment
5 followed by three years of supervised release.

6 The defendant committed two very serious crimes
7 less than a year after he pled guilty to two assault and
8 battery crimes in Virginia and was still subject to the
9 sentences for those offenses. He began his campaign against
10 Mr. Lambert with the goal of obtaining Mr. Vic Mackey's
11 identity and exposing Vic Mackey to the world and everything
12 that doxing entails.

13 It was in this pursuit of Vic Mackey's
14 identification that the defendant made repeated threats of
15 physical and psychological violence. And I view a threat to
16 rape a mother in front of her children as a threat to commit
17 psychological violence against those children to witness that,
18 and so that is a part of the threat here.

19 The context of the threats matter, because at the
20 time the defendant made them it was public knowledge that he
21 had traveled from New Hampshire to Virginia armed with
22 firearms, knives, and it was public knowledge that he didn't
23 hesitate to use pepper spray on counter protesters and was
24 convicted of offenses related to that.

25 It was public knowledge by that point that the

1 defendant had made statements that he was trying to make
2 himself more capable of violence. And the defendant
3 acknowledges that he had a platform. He had listeners. He
4 had followers. And so that context matters because he invoked
5 his followers, his Incel listeners, in part of this campaign
6 to threaten and extort Mr. Lambert.

7 And to me it's magnified because as a recipient of
8 a threat like this, you don't know what to look out for. You
9 don't know if you're waiting for Mr. Cantwell to show up at
10 your door. You don't know if you're looking for some
11 unidentified listener to show up at your door.

12 THE COURT: I'm inclined to agree with all of that.
13 Let me ask you a question that I have struggled with, and I'm
14 interested in your answer to this.

15 Would it have made any difference to you if Mr.
16 Cantwell had engaged in his -- the identical behavior with a
17 member of the public with whom he had had none of the prior
18 interactions that he had with the victim in this case? I
19 understand your position that provocation shouldn't be a basis
20 for a variance, but is there anything about the nature of the
21 interaction between the two of them that differentiates the
22 outcome in this case from a case in which Mr. Cantwell learned
23 that a member of the instant messenger company that had the
24 messages knew Vic Mackey's address and he contacted that
25 person cold and threatened to rape his wife in front of their

1 children? Are these two cases, would they be -- all other
2 things being equal, should they be sentenced identically, or
3 is there something about the nature with the interactions that
4 preceded these threats, although in your view not amounting to
5 provocation, nevertheless should affect the outcome?

6 Because at least there would be an argument, I
7 think the defendants allude to this, that these people have
8 exchanged such incredibly offensive and violent conduct on a
9 routine basis that would shock the ordinary person and that in
10 effect they had become through their interactions with each
11 other desensitized to their extraordinarily horrendously
12 violent nature of the exchanges between the two of them.

13 So answer my question about are those two cases,
14 should they be sentenced identically, in other words, there
15 should be no consequence, no evaluation of the interaction
16 between the two people that preceded the defendant's criminal
17 conduct, is it just the same as if he had called up an
18 employee at a company who had nothing to do with any
19 interaction with the defendant and made these threats?

20 MS. KRASINSKI: So to me, in answering your
21 question what I look at is the fact that the victim himself
22 had stopped harassing Mr. Cantwell for months before this
23 exchange.

24 Had Mr. Lambert --

25 THE COURT: It's not just that. I'm talking about

1 how two people who have a pattern of interacting with each
2 other in extraordinarily offensive and violent ways become
3 desensitized to the very nature of their communications and so
4 the effect on victim is different. Is there an argument to be
5 made here, and what's your response to it?

6 MS. KRASINSKI: I think even in this community that
7 spits vitriol and disgusting views, even in this community
8 there is a line, and I think that line is underscored by the
9 fact that the defendant viewed this language, so I'm assuming
10 Peach took that picture, guess that means you don't care what
11 happens to her either, that the defendant viewed a comment
12 that innocuous about a partner to be so offensive that he
13 claims that that's what spurned this whole thing, that that
14 shows that his following statement, so if you don't want me to
15 come and fuck your wife in front of your kids, then you should
16 make yourself scarce, is way over the line even in this
17 community that says disgusting things about Jews and about
18 black people.

19 THE COURT: I don't agree with you at all about
20 that. It's not a question of whether it's criminal and over
21 the line warranting punishment. It's a question of would I
22 sentence those two cases in exactly the same way. Because I
23 think if you are here in front of me with the hypothetical
24 case that I've given you, you would be saying to me this is
25 not a person who lives and interacts in this community where

1 people spew violence on a daily basis, that spew hatred on a
2 daily basis. This is a person that, like all the rest of us
3 that live in society where that kind of conduct is so shocking
4 that it's almost inconceivable, and the harm to a victim who
5 is subjected to that kind of threat in that kind of
6 environment is so extraordinary that it warrants a gigantic
7 upward departure. I think that's the argument you would be
8 making to me. If I'm wrong about that, tell me.

9 So I'm just trying to figure out do you really
10 sentence those two cases identically. I think there's a good
11 argument that they shouldn't be sentenced identically. That
12 doesn't mean that the defendant's sentence in this case should
13 be nothing. It just means that context matters when you try
14 to evaluate and make a sentencing judgment. That's all.

15 MS. KRASINSKI: No, I agree that context matters,
16 and it has been a very difficult deep dive into a world that I
17 was never a part of. But from my deep dive, even in this
18 world where people spew violence and hatred, making a comment
19 about someone's partner, about someone's children, is outside
20 of the norm of even that.

21 THE COURT: I don't disagree with you on that. I
22 understand what you're saying.

23 MS. KRASINSKI: And I want to address something
24 else that the defendant raises, and that is sort of that
25 unmasking white supremacist who posts this vitriol under a

1 pseudonym is some sort of social good, because that's another
2 one of his arguments for a downward variance.

3 But he didn't dox Mr. Lambert out of some sense of
4 moral obligation and -- you know, this case isn't about
5 whether it's a good thing.

6 THE COURT: I'm unlikely to credit the defendant
7 with some kind of altruistic act if that's what you're
8 suggesting. That's not a high likelihood.

9 MS. KRASINSKI: He also asks the Court to
10 disregard, and the term he uses is the unpleasantries that Mr.
11 Lambert has suffered as a result of being doxed. And the
12 Court -- I mean, I don't think the Court should do that
13 because it was exactly those unpleasantries that the defendant
14 was invoking when he threatened to dox Mr. Lambert. I mean,
15 that was what he was threatening to do.

16 And so I don't think the Court should disregard
17 that. And, you know, he says, well, I only posted it to a few
18 hundred people, but once information is online that's it, it's
19 available for the world. The damage is done. I mean, any
20 further dissemination of that was absolutely reasonably
21 foreseeable to the defendant and whatever Mr. Lambert said
22 online as Cheddar Mane, Cheddarman, or any of his other
23 pseudonyms, you know, he sat on that stand and at the end of
24 his testimony he talked about not being able to be a hockey
25 dad. And I may disagree with all of the views he said under

1 his pseudonym, but that's a real consequence and I don't think
2 the Court should disregard that.

3 And I also want to focus on the fact that, you
4 know, we know at the time this was happening Mrs. Lambert was
5 not aware of the threat, but I think in sentencing the
6 defendant and in considering his motions for a departure and a
7 variance that the Court should consider the very lasting
8 implications for her and those children as well. Their
9 photographs are in the public domain. Their address is in the
10 public domain. They no longer have any control over the use
11 or misuse of photographs of their children.

12 You know, the Court is well aware that once
13 something is on the Internet it can be copied, it can be
14 further disseminated. You don't know who has copied it. You
15 don't know who they've shared it with. You can't measure the
16 ripple effect. You can't find and delete every single copy.

17 He essentially gave hundreds of people the ability
18 to further disseminate this very private information, and the
19 truth is she knows about it now. I've met with her and
20 frankly, you know, even now it's too painful for her to really
21 want to participate.

22 And what the other sort of interesting part of this
23 to me is, you know, the defendant testified that he regretted
24 what he did, but even by the time of trial he never once took
25 steps to mitigate that. Those photographs could have been

1 deleted long ago, at least his posting of them. The address
2 information could have been deleted long ago.

3 Now, I get that that's, you know, closing the
4 stable door after the horses have already bolted, but it would
5 at least show some type of real regret for the actions he
6 took, you know, some sort of attempt to mitigate the damage.

7 But when Attorney Davis and I were preparing for
8 trial and meeting with Mr. Lambert, you know, that was sort of
9 the one thing that really -- that Mr. Lambert really continued
10 to struggle with, with this sort of online platform, is that
11 the photographs, all that information was still up, it was
12 still accessible. Someone in my opinion with true remorse,
13 true regret for this exchange, for this conduct, would have at
14 least taken some effort to mitigate the damage but never did.

15 So in sum, based on the history and circumstances
16 of this offense, the defendant's history, the nature and
17 circumstances of this offense, a sentence of 51 months of
18 imprisonment would reflect the serious nature of Mr.
19 Cantwell's crimes, it would promote respect for the law, it
20 would provide just punishment, it would afford adequate
21 deterrence, and it would protect the public from future crimes
22 of the defendant.

23 THE COURT: Thank you.

24 All right. I'll hear from the defense.

25 MR. WOLPIN: So this case is less about the what

1 and more about the why. I mean, ultimately the discovery we
2 were provided has everything in writing. Much of what was
3 presented at this trial was fixed in writing. And so there
4 isn't a dispute at this point as to the what. But I do think
5 the why, as the Court has alluded to, is an important
6 consideration particularly for sentencing, and I make that
7 argument because there's a spectrum of why. There is on one
8 end completely unprovoked, the sort of model that the Court
9 noted, and probably as far on the other end is self-defense,
10 that the conduct leading up to it was egregious or sufficient
11 to the point to make someone not even guilty of the offense.
12 This in our opinion falls somewhere obviously in the middle of
13 that spectrum.

14 It is not an unprovoked situation, it is not a
15 self-defense situation, but it is a situation where context
16 and why matter, and we are asking that the Court consider the
17 13 months that Christopher has already served in relation to
18 pretrial time, which with sort of the nuances of federal good
19 time is about a 15-month sentence with the good time credit as
20 well as continued supervision upon his release.

21 Before talking a little more about the sort of
22 context of this case, I do think it's worth addressing the
23 context of other cases, and there is some of that in my motion
24 and some of that in the government's response as to other
25 cases charged similarly or with similar facts.

1 And to some degree it is somewhat difficult --

2 THE COURT: Yeah, there are a couple of things in
3 your memoranda on that point that troubled me.

4 MR. WOLPIN: Okay.

5 THE COURT: To the extent that you're implying that
6 prosecutors don't often charge these kinds of offenses and
7 therefore I should give the defendant a lighter sentence,
8 again, I don't see that as part of the calculus that I should
9 be engaging in when trying to avoid unwarranted sentencing
10 disparity. And to the extent you identify specific cases
11 where you say the sentence was lower and the charges are
12 comparable, and the government identifies cases that it says
13 are comparable and the sentences are higher, that's an inquiry
14 that rarely turns out to be useful in evaluating claims of
15 unwarranted sentencing disparity.

16 What would be useful if you had it that you don't
17 provide is -- if you could demonstrate that a very high
18 percentage of certain kinds of cases are routinely the subject
19 of downward departures and variance that are similar to this
20 case, that would be useful.

21 And a good example of that is in the child
22 pornography area where you well know there are certain kinds
23 of enhancements that the guidelines call for that almost no
24 judge gives. And when judges widely don't follow the
25 guidelines, that is important information because if you're

1 the one judge who sticks with the guidelines, you may be
2 promoting unwarranted sentencing disparity.

3 But the kind of information you provide me on that
4 point does not cause me to think that the sentence should be
5 other than a guideline sentence simply to avoid unwarranted
6 sentencing disparity. It's the kind of analysis that just is
7 very rarely fruitful, but you can say what you want to say
8 about it. I've read your memorandum.

9 MR. WOLPIN: The effort -- obviously with the less
10 frequency or infrequency of this charge, it is harder to
11 collect that data.

12 I do think that was addressed in the best way I
13 could come up with, which was the tool through the guidelines
14 itself, this analyzer tool, which allowed me to collect all
15 2B3.2 cases within our region and say, hey, what is going on
16 in those cases broadly rather than saying this particular case
17 had this fact and this fact. It's a broader data.

18 And when you look at 2B3.2 which is the guideline
19 we're dealing with here, there were 13 cases in the time frame
20 available through the data analyzer, which is 2015 to 2019,
21 looking through New Hampshire, Maine, Rhode Island, and
22 Massachusetts, our sort of First Circuit neighbors, there were
23 13 cases noted in those circuits or in those districts over
24 those five years. All of them were given below guideline
25 sentences.

1 So from the perspective -- and that's attached as
2 Exhibit I, I believe, and J, sort of what was pulled out of
3 that tool.

4 So that I agree it can be tough to come in and say
5 case X, case Y, here's the difference.

6 THE COURT: And especially when there's a very
7 small subset of cases you analyze. That's why -- I find the
8 argument persuasive in the context of child pornography where
9 you could say 75 percent of the judges depart downward given
10 these circumstances, and if you don't depart downward, there's
11 no good reason to distinguish your decision from others.
12 You're in fact promoting unwarranted sentencing disparity by
13 sticking with the guideline.

14 That argument where it can be demonstrated is
15 appealing. This one is harder to establish because you're
16 using a very small subset of cases. To really evaluate it I
17 would have to kind of undertake a detailed analysis of each of
18 the cases that you are proposing. I would have to read the
19 sentencing transcript to understand whether there was any
20 cooperation and what the judge found about how accepting
21 responsibility -- in how many cases there was acceptance of
22 responsibility credit given because the defendant pleaded
23 guilty. There are just so many factors that really would have
24 to be considered to prepare case A against case B, and I don't
25 think that's what the drafters of the sentencing statutes were

1 after when they talked about avoiding unwarranted sentencing
2 disparity.

3 So I don't tend to give much weight to that
4 argument. I certainly considered it to the extent you
5 outlined it in your brief. I would suggest you find a more
6 better use of your time on other aspects of your memorandum.

7 MR. WOLPIN: Okay. So to finalize or move on from
8 that, and it directly relates to the circumstances of this
9 case which I'm about to address, is I do think that what a lot
10 of these charges are intended to address, including one cited
11 by the government, are when there's commentary to public
12 officials, there's an interference with government action. So
13 we've had recent cases like that where there's a threat to a
14 legislator, a threat to someone counting votes, that there's a
15 broader need for deterrence and punishment where there is an
16 effort to inhibit the effective administration of our
17 government.

18 That is not the situation here. This is ultimately
19 a dispute that is limited to a dispute between two individuals
20 involved in a far longer running dispute, not something that
21 has this broader impact of government operation.

22 The other cases I tend to see in reviewing this are
23 sort of the sexting scenario where there's an effort to
24 obtain, you know, naked photographs, many naked videos, and
25 those are again similar cases cited that have another broader

1 deterrent-based interest. I think --

2 THE COURT: Yeah, I sentenced that case, and I can
3 tell you the sentence was a lot longer than the sentence that
4 he's being exposed to here. Those kind of cases -- I don't
5 remember the sentence I gave, but if you went back and looked
6 at it, you can see it's way, way higher than what we're
7 talking about here.

8 MR. WOLPIN: I do think those are the kind of
9 scenarios where general deterrence and punishment has to be at
10 its utmost. I think when it's a private dispute, that is not
11 the same situation where there's a -- I mean, not that there's
12 not a need to punish and regulate that behavior but not to the
13 same punitive extent as where there are broader public
14 interests at work.

15 So getting back to our situation, you know, the
16 government presented a timeline just now that incorporated
17 some of our facts but obviously not all. It did come through
18 the government's prism. We do think it's important for the
19 Court to understand the context and why this came to be. And
20 I know there is I think -- although we've resolved that
21 factual dispute, I think there is some factual dispute as to
22 what kind of role Cheddar Mane had in this process.

23 THE COURT: Yeah. So let's be clear. I am quite
24 satisfied that during the period in February and March that
25 there was a very -- a coordinated campaign by the members of

1 the Bowl Patrol, including the victim in this case, to harass
2 Mr. Cantwell to attempt to disrupt his ability to earn a
3 living off of his programs and it drove him crazy. That to me
4 is -- that was established at the trial.

5 But there is an additional contention that the
6 government is making that you may have evidence to refute that
7 you want to bring to my attention, which is that that pattern
8 of harassment had waned by June and in any event did not
9 involve the victim in the case. I think the government is
10 making that contention.

11 Have I got that wrong? Am I mischaracterizing your
12 position?

13 MS. KRASINSKI: I don't know about the broader
14 campaign. I think the evidence established that --

15 THE COURT: Your memorandum sort of suggested that
16 the campaign had already fallen off at that time. If you're
17 not contending that, that's fine. If they are contending
18 that, then to the extent you want to refute that, you can, but
19 I do think it is the government's contention clearly that the
20 government asserts that the victim in this case was not an
21 active participant in that campaign in the months immediately
22 preceding the defendant's criminal conduct. And if you want
23 to refute that, you can.

24 MR. WOLPIN: I'll refute that in the sense that the
25 issue Christopher was dealing with from his end wasn't

1 resolving. It wasn't diminishing. He was continuing to get
2 these kinds of actions.

3 What became more difficult for him to unpack was
4 who it was coming from because as was brought out to some
5 degree at trial, there became the use of spoofing software
6 and, you know, phone companies that allowed you to do this and
7 that, and he spent a significant amount of time trying to make
8 it stop from that end, but he was never certain who was the
9 person calling even when it was Cheddar Mane or not Cheddar
10 Mane.

11 THE COURT: I agree with that. That's consistent
12 with my understanding.

13 MR. WOLPIN: I mean, it's sort of the amorphous
14 sort of conspiracy concept that you can't always tell where
15 it's coming from. And so for Christopher when this contact
16 came to him from Peach which -- and I know the government
17 addressed the one as well in the chat that is sort of
18 downplaying that, that language has an implicit malice built
19 in whether it's --

20 THE COURT: What are you talking about?

21 MR. WOLPIN: The June 15th contact to Ms. Peach
22 that has been provided.

23 THE COURT: The one we talked about just today you
24 mean?

25 MR. WOLPIN: Just today, correct.

1 THE COURT: Okay.

2 MR. WOLPIN: Which was then forwarded along to
3 Chris.

4 THE COURT: Doesn't that exchange show that Mr.
5 Cantwell didn't think that came from Mr. Lambert?

6 MR. WOLPIN: Chris doesn't know who that comes from
7 at the time. I mean, he understands that --

8 THE COURT: Well, you're not saying that -- I'm not
9 understanding you.

10 MR. WOLPIN: Okay. So Chris gets this from Peach
11 out of the blue. He understands that it's in reference,
12 because she explains it to him, to her visiting of Cheddar
13 Mane. He's aware that this has to have a sort of Cheddar Mane
14 nexus. Again, the same thing. He doesn't know who it's from,
15 he can't be certain, but it's on his mind.

16 And then the next day that person who sort of gets
17 involved shows up in his chat room and to him that's not a
18 coincidence. There is some, in his mind some pattern of
19 malice. It can't be proven, it's uncertain, but in
20 understanding provocation I think the Court does need to
21 consider what his view of what was happening was, and it
22 wasn't an unreasonable view in light of sort of the very
23 narrow subject matter of that text.

24 THE COURT: Do you contend that anything -- that
25 the victim -- anything the victim did while in the -- what is

1 it called, Peaceful White Folk or something?

2 MR. WOLPIN: Yes.

3 THE COURT: Whatever it's called, that Telegram,
4 did the victim do anything provocative other than to enter
5 that room?

6 MR. WOLPIN: It's his appearance that was viewed
7 with others who are also --

8 THE COURT: You agree he didn't do anything
9 provocative other than to appear in the room?

10 MR. WOLPIN: Not in language. In appearance with
11 others who are Bowl Patrol folks in a chat room run by Chris,
12 that was the beginning. That was sort of an unexpected -- to
13 be clear, this is not something where Chris sought out contact
14 with him that day or the initial contact comes from that. So
15 this idea that there's a long-standing plan and it came to
16 fruition on that day, Chris was not expecting to have any
17 contact with Cheddar Mane that day.

18 THE COURT: No, that's a different statement from
19 there was a long-standing plan to try to dox Vic Mackey and to
20 try to threaten people who might be able to give him
21 information to dox Vic Mackey. That seems to be clear from
22 the evidence in the case.

23 MR. WOLPIN: Yes.

24 THE COURT: I agree with you that there's no
25 evidence to suggest that he planned that this will occur on

1 June 16th, that instead there are these circumstances someone,
2 the victim said it wasn't him, we don't have any evidence it
3 was him, communicated with Peach about a photo. Peach shared
4 that information with the defendant. The defendant responded
5 and said he didn't think it was Mr. Lambert who shared that
6 information.

7 Mr. Lambert then joins the Peaceful White Folk
8 Telegram channel. He testified he didn't know that the
9 defendant was associated with it. We have no evidence to call
10 that into question. The defendant, though, I understand sees
11 him there, identifies him with the Bowl Patrol, connects it
12 with the photograph that occurred that was commented on to
13 Peach, and at that point becomes in your view upset again that
14 Lambert is again trying to disrupt his life or interfere with
15 him in ways that he didn't want to be interfered with.

16 MR. WOLPIN: Yes, and then within the context of
17 how that conversation evolves, there's another reference to
18 Peach, it's another sort of menacing type statement, and
19 that's when we get the statement that really is the crux of --

20 THE COURT: Right, but you're leaving out the
21 victim trying to deescalate the situation and your client
22 being unwilling to deescalate.

23 MR. WOLPIN: My -- yes. I mean, Chris's
24 frustration is he believes there's more going on here and
25 Cheddar Mane is saying, I'm not involved, I'm not involved,

1 and that's not something that Chris finds credible and that's
2 what's sort of driving that continuing conversation.

3 I do want to address this concept of doxing. I
4 mean, it's implicit in this case. It's also in and of itself
5 not an illegal act and commonplace, fortunately or
6 unfortunately, in this group. It's not a social good
7 question. We're not arguing that the Court should assign
8 altruistic motives and this is a social good.

9 We're arguing that the inevitability of his doxing
10 was not Chris's doing. Chris could have taken much more
11 aggressive efforts --

12 THE COURT: I'm not sentencing him because Mr.
13 Lambert's identity became public, if that's what you're
14 worried about. I'm sentencing him because he threatened to
15 rape Mr. Lambert's wife in front of his children in order to
16 extort something from him. That's what he's getting sentenced
17 for and the other crimes which he's --

18 MR. WOLPIN: Understood. But my concern is the
19 presentation about impact and how this has impacted Cheddar
20 Mane and his family. It is very hard to untangle those two
21 things because the hockey business, that's not because of a
22 threat. That's because ultimately his identity in his own
23 words were revealed, and the community has decided that that's
24 not someone they want in that position. That's not, you know,
25 Chris's action and, you know, A to B to get to that result.

1 And so I agree that the Court is considering the dispute
2 between these two men for I believe what it is.

3 As to this concept of mitigation and could have
4 deleted it, brings up other concerns obviously with defendants
5 who go about deleting information that relates to their case.
6 I mean there's certainly circumstances as defense attorneys
7 when that's flipped on its head, and the argument is there's
8 hiding, there's deletion -- it could arguably be a crime to
9 tamper with evidence and eliminate evidence.

10 Certainly I don't recall any conversation between
11 the parties, you know, can you do this, are you willing to do
12 this, can you take this down.

13 THE COURT: I don't think the length of the
14 sentence is going to be determined by whether he took down the
15 information or not.

16 MR. WOLPIN: All right.

17 I mean, ultimately again, the Court is required and
18 should consider the nature and circumstances of the offense
19 which revolved around this dispute between these two men. I
20 do believe that mitigates to a significant degree. We're
21 still looking at a highly -- even time served. He lost his
22 home. He sat in jail. He has gotten COVID in jail. This is
23 not something where anyone who is sort of thinking about a fly
24 by night threat or saying something like this on online is
25 going to view this as something you just get away with or walk

1 away from. This has been seriously impactful on his life,
2 will continue to be through supervision, and certainly will be
3 on the punitive end, and that the whole time I've been working
4 with him he's been in jail.

5 If I could have a moment, your Honor.

6 THE COURT: Yes.

7 (Attorney Wolpin confers with the defendant)

8 MR. WOLPIN: I would just reserve -- to the extent
9 I haven't addressed orally arguments in the motion about
10 computer monitoring, about application of the departures, I
11 would just incorporate those within and not address those.

12 THE COURT: Yeah. So obviously we're mostly
13 concerned with getting the length of the sentence right here,
14 and I'm sure that's the biggest concern your client has here.

15 MR. WOLPIN: Of course.

16 THE COURT: But I am concerned with crafting a
17 monitoring of Internet access as narrowly -- narrowly so that
18 we can to the maximum extent possible preserve the defendant's
19 ability to lawfully use the Internet for work and other things
20 while appropriately allowing supervision of his activities.
21 I'm willing to work with the parties about crafting that, but
22 I'm not sure it makes tremendous sense to devote lengthy
23 argument to it now.

24 I think that clearly there is -- and we can talk
25 about it if necessary, but the government's suggestion I think

1 is the way this software would operate is that it would keep a
2 record of what he did, but it wouldn't be subject to
3 inspection without -- could we craft a condition that allowed
4 for the monitoring to occur but not routine inspection of the
5 data that is collected without reasonable suspicion to believe
6 the defendant has engaged in conduct that would violate, and
7 perhaps we should do another hearing on that later. We can do
8 it by Zoom or something.

9 But that's -- I'm sensitive to the fact that
10 despite the defendant's use of the computer to commit these
11 crimes a blanket kind of -- certainly a blanket prohibition on
12 use would be problematic, but even a monitoring and routine
13 inspection of routine interactions that the defendant has
14 could impair his ability to use the computer for work-related
15 purposes because certain employers might not be willing to
16 allow that kind of inspection.

17 So I'm aware of the concern, I want to address it,
18 but the most important thing today is to get the sentence
19 right.

20 MR. WOLPIN: We agree.

21 THE COURT: So I take your argument. We can talk
22 about that in a minute if we need to.

23 MR. WOLPIN: Thank you.

24 THE COURT: Mr. Cantwell, you have an opportunity
25 to speak. You don't have to say anything. I won't hold it

1 against you if you don't. But if there is anything you want
2 to say, I'll be happy to hear it.

3 Do you want to say anything?

4 THE DEFENDANT: I do. There's a couple of things I
5 want to say.

6 THE COURT: Yeah, go right ahead.

7 MR. WOLPIN: Your Honor, could I just ask for a
8 moment?

9 THE COURT: Yeah.

10 Mr. Cantwell, if you're more comfortable sitting,
11 you can do that, or stand, whatever you're comfortable doing,
12 but consult with your lawyers first.

13 (Attorney Wolpin confers with the defendant)

14 THE DEFENDANT: Is this suitable?

15 THE COURT: I can hear you fine, yes.

16 THE DEFENDANT: Okay.

17 So the only thing that I want to convey -- I think
18 Mike Tyson is quoted as saying everybody has a plan until they
19 get punched in the face. And while I certainly haven't been
20 punched in the face today, it's kind of like the metaphors
21 that I'm sort of in the habit of using.

22 THE COURT: Hang on just one second.

23 Counsel, could you move that microphone a little
24 bit closer to him so that he can be heard?

25 THE DEFENDANT: And so I had written a pretty

1 lengthy thing, which I am not going to go through today.

2 I think that what has been lost here and has
3 frustrated me, and as I've done my best to speak to my
4 attorneys, is that my lived experience is that this problem
5 continued perpetually literally every day for eight months and
6 it consisted of threats of violence against me, but I could
7 not attribute them to individuals because they behaved
8 functionally -- I don't know if you're familiar with the term
9 black block, okay? This is when you see these anarchists
10 running around in the streets dressed in all black breaking
11 windows and stuff because -- and it's difficult to identify
12 them because they're all dressed the same, okay? It's a
13 tactic that they use to avoid liability for their crimes, all
14 right?

15 And these guys, this is exactly what they did on
16 the Internet, and this was reflected to some extent in a 302
17 of Cheddar Mane's interview with the FBI or with the
18 prosecution. I forget. There were several different 302s
19 that I read. And he said that he had many different screen
20 names that he used with names as innocuous as FU, but using
21 the full word. I mean, like that N word was -- like names
22 like this he used. He created countless fake accounts, as did
23 the entire Bowl Patrol group.

24 And so my lived experience is the Bowl Patrol is
25 perpetually, constantly harassing me, threatening me, trying

1 to destroy my business, pretending to be me, defaming me,
2 telling people -- trying to stir violence against me saying
3 that I ratted on the Rise Above Movement, guys who were
4 convicted of fighting down in Charlottesville, which I didn't
5 do by the way.

6 I gave video to the FBI in cooperation with their
7 investigation voluntarily because we were being accused of
8 things that we didn't do down there and I wanted to do the
9 right thing. And I gave them my body camera video and I gave
10 them all the information that I had about what happened down
11 there because what they were under the impression of was
12 false.

13 And so, you know, when the Bowl Patrol is running
14 around saying that I ratted out the Rise Above Movement, they
15 knew that wasn't true. They were trying to get guys to harm
16 me. That's my lived experience with this.

17 And I did not attribute any of those threats to
18 Cheddar Mane because I couldn't. You know, when the FBI asked
19 me, did he threaten you, I said, no, I can't say that he did
20 because I never saw him actually do that, but a lot of this
21 was coming in.

22 And so when Peach sends me this screenshot, okay,
23 she says, is this Cheddar Mane, and, yes, I initially say, I
24 don't think so, why would I think that's Cheddar Mane.

25 Later on in that conversation, I think that we

1 glossed over that chat log a little too quickly and I hope
2 that you'll take another look at it, okay, is that she
3 explains to me, I took this picture of his kids and he got all
4 weird about me taking the picture so I never sent it to you.
5 And so when she sends me this screen cap of the message that
6 she's getting, my perception is, after it's explained to me,
7 that has to be Cheddar because nobody else would have known
8 she took those photos. Cheddar is super scared that somebody
9 is going to dox him, that he's going to get identified, he
10 wouldn't run around telling everybody that Katelen has
11 pictures of his kids, okay?

12 So my perception of this is I have a constant
13 stream of nonstop harassment that I've been to law enforcement
14 about repeatedly asking for help. They're ignoring my cries
15 for help. And then this guy -- he goes from me to this woman
16 who I asked to marry me and so -- I'm sorry. When he comes
17 into the chat the next day and then he tells me that he left
18 me alone, I know that that's not true. I know that he's lying
19 because he was just harassing Katelen earlier that day, and
20 so when it's portrayed as he's trying to deescalate the
21 conflict, that's not my perception of it.

22 My perception is he's continuing this. He's lying
23 to me. He's trying to avoid responsibility for what he's been
24 doing, which is a constant pattern that's been going on now
25 for eight months, and this was something that happened because

1 they didn't think I was supportive enough of a guy walking
2 into a synagogue and killing a bunch of people. That was what
3 motivated their vendetta against me, that I said I don't want
4 you to promote this stuff on my platforms.

5 And so they -- you know, that was my lived
6 experience of it in any case, and I don't believe that he was
7 innocent. When he showed up in that chat room with that name,
8 the mistake that he made was that he showed up using an
9 account that I could identify.

10 Cheddy Blac was not his username in other contexts.
11 That was just something that bore enough resemblance to the
12 Cheddar Mane name that I recognized it that I called him out,
13 and then he got scared and he tried to backpedal and he tried
14 to get his way out of it, you know.

15 And so it is true that I had threatened to dox him
16 previously, it's true that I associated that with Vic, but
17 when I get these photos from Peach -- I had never seen or
18 heard of Mrs. Lambert before that day, okay? I never -- I'm
19 not even sure I knew if he had kids. I knew he was
20 married but, like, you know --

21 THE COURT: Excuse me. You don't have to answer
22 this if you don't want to but --

23 THE DEFENDANT: I'm happy to answer your question.

24 THE COURT: -- given all that you're saying to me,
25 I'm just a little confused about something, and don't answer

1 if you don't want to, but when did you learn Cheddar Mane's
2 identity?

3 THE DEFENDANT: I learned -- Peach had sent me a
4 photograph of her, Cheddar, and Hard Mouse sitting on a couch
5 when she went to go visit them in the fall of 2018. So that's
6 what I had.

7 And I knew that Peach had been to his house at that
8 point because she told me about the visit, and at that time
9 things were copacetic. Things were, you know, reasonably
10 friendly or whatever, right?

11 THE COURT: So you knew at that point that this
12 person she had visited was Cheddar Mane?

13 THE DEFENDANT: Yeah. And so I knew that I could
14 identify Cheddar Mane, but at that point I had never gone to,
15 like, get the information, right?

16 THE COURT: I got it. I got it.

17 THE DEFENDANT: And so what happens is when he
18 shows up in the chat, and you could cross reference the
19 timestamps, I say to Peach, give me those photos and the
20 address, okay, and that's when I go to obtain the information.

21 Now, I could have done this forever ago, and the
22 prosecution pointed out that I doxed the guy Mosin-Nagant,
23 another one, okay? And when I doxed Mosin-Nagant I never
24 said, give me Vic Mackey's identifying information, because
25 there was no doubt that Mosin-Nagant was guilty of what he

1 did. That was when Mosin-Nagant posted my address on Twitter
2 under his own Twitter handle, okay?

3 So there was no doubt that Mosin-Nagant had
4 published my address, so I just went ahead and published
5 Mosin-Nagant's address. I just published his information. I
6 didn't say give me something.

7 What happened with Cheddar Mane was --

8 (Attorney Wolpin confers with the defendant)

9 DEFENDANT: Okay. Thank you.

10 When I'm talking to Cheddar Mane, he tells me, I
11 didn't do this, okay? And I say, well, if you didn't do it,
12 then give me Vic's identity, he's a better target than you.
13 All right?

14 So this emerges -- the point that I'm trying to
15 make is that this emerges spontaneously in that moment for
16 that purpose, okay? Yeah, I could have doxed this guy anytime
17 I wanted to. I could have contacted him anytime I wanted to.
18 I could have showed up at his house anytime I wanted to, and I
19 just didn't have any desire to do it.

20 When he comes into the chat room after he had been
21 harassing Peach and he lied to me, you know, yeah, this thing
22 went on for a long time, but that's my lived experience of
23 what happened, and I guess that's all I've got to say.

24 THE COURT: Okay.

25 THE DEFENDANT: And I'm happy to answer other

1 questions if you got them. I'm happy to do that.

2 THE COURT: No. I think I have the gist of your
3 position down I think and --

4 THE DEFENDANT: And I want to -- sorry. I should
5 also say I do regret whatever discomfort I've caused Mrs.
6 Lambert, okay?

7 I could have had people come in to this courtroom
8 and say positive things about me. And when people do that,
9 they run the risk of people bothering them online, threats of
10 violence. I recognize that, and I don't want to have anybody
11 come do that for me for that reason.

12 To the best of my knowledge she's an innocent
13 person, so I do feel bad about that. Again, it wasn't a
14 thought-out thing with her. This was something that is like
15 -- I'm in the middle of this conversation and I get this
16 picture, and I don't mean to cause her, you know, any trouble.
17 I don't think that Cheddar Mane is an innocent victim,
18 frankly, but to the extent that she is, I'm sorry for whatever
19 discomfort I've caused her because that wasn't my goal.

20 THE COURT: All right. Thank you. I appreciate
21 that.

22 Anything else from the defense counsel before I
23 impose sentence?

24 MR. WOLPIN: No.

25 THE COURT: Anything else from the government?

1 MS. KRASINSKI: No, your Honor.

2 THE COURT: All right. Thank you.

3 All right. I'm going to decline the defendant's
4 motions for departure and variance. I determine that the
5 defendant's total offense level is 20, his Criminal History
6 Category is III, that no departures or variance is warranted.
7 I'm going to sentence the defendant to a sentence at the
8 bottom of the applicable range of 41 months. Let me explain
9 my thinking.

10 Let me start with the Criminal History Category
11 calculation. I think it's a close call in my mind. The
12 defendant does qualify as a Criminal History Category III
13 literally.

14 The defense put forth some arguments that I took
15 very seriously about the age of the one point attributed for
16 the DUI conviction and I carefully considered the defendant's
17 argument that the two points that resulted from the fact that
18 the crimes were committed while the defendant was under a
19 period of supervision is technically a correct adjustment, but
20 when I look at this defendant holistically and his background,
21 it's borderline whether he's a Criminal History Category II or
22 III. I think he meets it. I think I can take into account
23 the borderline nature of this by determining where in the
24 range to sentence the defendant, and I have done so and
25 concluded that a sentence at the bottom of the applicable

1 range is warranted.

2 I do think that in this case the fact that the
3 defendant threatened the victim's family member is an
4 aggravating circumstance that would ordinarily justify a
5 sentence higher than the bottom of the applicable range. So
6 why am I sentencing the defendant at the bottom of the range?

7 The threats here that the defendant made are
8 abhorrent, shocking, they are extremely damaging, and I don't
9 diminish those, the seriousness of those threats to any
10 degree. It's just horrendous threats. So I want to make that
11 clear right from the outset.

12 Why then would I sentence at the bottom of the
13 range? I want to evaluate the provocation argument that the
14 defendants put forth for a variance.

15 I don't believe that there was provocation in this
16 case that warrants a downward variance. I largely accept the
17 revised chronology that the government has produced today as
18 being a correct description of what occurred here, and I do
19 agree with Mr. Cantwell's position to this extent. I think
20 the members of the Bowl Patrol were trying to drive him crazy.
21 They were trying to deprive him of his ability to earn a
22 living, they were trying to disrupt his program, and Mr.
23 Cantwell chose a criminal and ultimately criminal and
24 certainly irresponsible way to respond to that effort, but I
25 don't believe it warrants a variance for provocation because I

1 do believe that while the victim in this case was a
2 participant with other Bowl Patrol members in some of the
3 early trolling behavior that occurred here, I'm not satisfied
4 that the immediate incident was precipitated by any
5 provocation by the victim in this case.

6 I don't believe and I'm not persuaded that the
7 communication to Peach about the photo came from the victim.
8 We don't know who communicated with Peach about that, but the
9 defendant according to the screenshots did not believe that
10 Mr. Lambert was the source of that communication.

11 And what happened here, Mr. Lambert entered into
12 the Peaceful White Person site and that in and of itself is
13 not provocation under these circumstances to justify in any
14 way, shape, or form Mr. Cantwell's behavior.

15 I understand from your perspective you thought this
16 guy, you know, was part of a campaign to drive you crazy, and
17 I do not doubt that you were extremely agitated when you saw
18 him there and you disregarded his efforts to deescalate
19 because you determined he was part of a group of people that
20 were still out to get you, but I can't say that you were
21 provoked in any way in the immediate sense by what occurred
22 there. You engaged in threatening behavior to Mr. Lambert and
23 he responded in a way that was unacceptable in my view and
24 does imply a threat against someone you care deeply about.
25 And then you escalate it further, and that's where you engaged

1 in the conduct that resulted in your presence here today, and
2 I don't believe that that is provocation that justifies a
3 sentence below the bottom of the applicable range.

4 But I do understand the human circumstances you
5 were in. You felt these people were trying to destroy you,
6 they were trying to drive you crazy, you were extremely
7 agitated, you thought Mr. Lambert was a part of that group.

8 And there was a pattern in your interactions with
9 him in which you both had become desensitized to the
10 horrendous nature of your interactions with each other, and
11 that's the only reason that I'm not giving you a sentence
12 above the top of the range, that I'm not in fact varying
13 upward in this case, because the conduct you engaged in in my
14 mind is so serious and so damaging that it ordinarily warrants
15 an even higher sentence than the one that I have imposed here.
16 But I've tried to understand your circumstances and why you
17 ended up where you did, and I tried to take that into account
18 as best I could, and given the totality of those circumstances
19 I've decided not to sentence you at the top of the range, not
20 to vary above the range, but to give you a guideline sentence
21 which still is a very significant period of incarceration. I
22 understand that and I believe that the interests of justice
23 require it.

24 In developing a sentence here I have to consider
25 what a just sentence is, and as I said, the nature of your

1 behavior is so serious, so egregiously wrong that justice
2 requires a significant prison sentence.

3 And I think both individual and general deterrence
4 require a significant prison sentence here, and that's why I'm
5 imposing it.

6 I believe that I'm avoiding unwarranted sentencing
7 disparity by sentencing the defendant to a term of
8 imprisonment within the guideline range.

9 So I am going to impose a sentence of imprisonment
10 of 41 months, which is the bottom of the applicable range.

11 I want to reserve the right to consult with the
12 parties about the Internet supervision condition in a later
13 telephone conference, because I want to make every effort to
14 craft a condition that serves the government's interests while
15 also protecting the defendant's ability to engage in lawful
16 business activities using the computer when he completes his
17 sentence.

18 Let me read the sentence as I propose to give it:

19 Pursuant to the Sentencing Reform Act of 1984, and
20 having considered the sentencing factors enumerated at 18
21 U.S.C. Section 3553(a), it is the judgment of the Court that
22 the defendant is hereby committed to the custody of the Bureau
23 of Prisons to be imprisoned for a term of 41 months. This
24 term consists of a term of 41 months on Counts 1 and 2 to be
25 served concurrently.

1 Upon release from imprisonment the defendant shall
2 be placed on supervised release for a term of two years. This
3 term consists of two years on Count 1 and a term of one year
4 on Count 2, such terms to be served concurrently.

5 Within 72 hours of release from the custody of the
6 Bureau of Prisons the defendant shall report in person to the
7 district to which the defendant is released.

8 While under supervision the defendant must comply
9 with the standard conditions that have been adopted by this
10 court and the defendant must comply with the mandatory and
11 proposed special conditions attached to the presentence report
12 except for the computer monitoring condition which we will
13 have a further discussion about and it will eventually get
14 incorporated in the judgment in an effort to try to address
15 the specific concerns raised in the defendant's memorandum.

16 It is ordered that the defendant shall pay to the
17 United States a special assessment of \$200. It shall be due
18 in full immediately.

19 The Court will waive the fine in this case as the
20 defendant does not appear to have the financial ability to pay
21 one.

22 The defendant is remanded to the custody of the
23 United States Marshal.

24 Are there any objections from the government to
25 this proposed sentence other than the ones raised during the

1 course of this hearing?

2 MS. KRASINSKI: Your Honor, I think as it relates
3 to Count 2 the statutory maximum is 24 months of imprisonment.
4 So I think -- if I heard the Court correctly --

5 THE COURT: Why did I miss that? I'm sorry.

6 MS. KRASINSKI: -- I think you said 41 months of
7 imprisonment on both, but I think it should be 41 months on
8 Count 1 and then 24 months on Count 2.

9 THE COURT: That I think is a mistake. I
10 apologize.

11 Yes. So Count 2 is a 24-month sentence to run
12 concurrently with the 41-month sentence imposed on Count 1.

13 Thank you, counsel, for drawing that to my
14 attention. I apologize.

15 All of the defendant's objections as stated in his
16 memorandum and during this hearing are preserved for purposes
17 of appeal.

18 Beyond that, is there anything else you need to
19 bring to my attention?

20 MR. WOLPIN: No, your Honor.

21 THE COURT: All right.

22 I'll impose the sentence as I've read it.

23 So you went to trial in this case. You have a
24 right to appeal. To perfect that appeal, you need to file a
25 Notice of Appeal within 14 days or you lose your right to

1 appeal.

2 You can ask your lawyers to file the notice on your
3 behalf or you can file it yourself if you want to, you can ask
4 the clerk's office for help, but it has to be filed within 14
5 days or you lose your right to appeal.

6 So unless you're planning to give up your right to
7 appeal, tell your lawyers, file that notice for me, because
8 otherwise you'll lose your right to appeal.

9 All right. Is there anything else that we need to
10 take up today? No? Okay. Thank you. That concludes the
11 hearing.

12 (Conclusion of hearing at 1:03 p.m.)
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C E R T I F I C A T E

I, Susan M. Bateman, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings, to the best of my knowledge, skill, ability and belief.

Submitted: 5-4-21

/s/ Susan M. Bateman
SUSAN M. BATEMAN, RPR, CRR